

Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
and
COST-BENEFIT ANALYSIS**

PART 1: INTRODUCTION

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

ORR-assigned rule set number:

2015-028 LR

ORR rule set title:

Workers' Compensation Agency General Rules

Department:

Department of Licensing and Regulatory Affairs

Agency or Bureau/Division

Workers' Compensation Agency

Name and title of person completing this form; telephone number:

David Campbell
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Reviewed by Department Regulatory Affairs Officer:

Liz Arasim
Office of Policy and Legislative Affairs
Department of Licensing and Regulatory Affairs

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
 - (b) Instructions on any existing administrative remedies or appeals available to the public.
 - (c) Instructions regarding the method of complying with the rules, if available.
 - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

No federal or state standards exist. No state or national licensing exists. The proposed rule expands investment opportunities for workers' compensation group self-insurers and is less restrictive than existing rules.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

The proposed rule provides investment options for group self-insurers compatible with a number of other Midwest states that offer similar programs.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

No other laws, rules or other legal requirements exist that duplicate, overlap or conflict with the proposed rule.

Purpose and Objectives of the Rule(s):

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

The proposed rule expands the amount of money held by a workers' compensation group self-insurer that can be invested in common and preferred stocks. This change will permit these groups to spread their investment risk. A desired outcome of this proposed rule change is to provide self-insurers a

greater opportunity to earn investment income in an “up” market, and overall diversification of investments.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

The rule is not intended to address or react to harmful behaviors. Changing this rule provides greater flexibility for group self-insurers in their investment options.

(6) Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

Self-insurer groups provide cost effective workers' compensation coverage to their employer members. This rule will increase the potential for investment earnings a group may earn, and in turn potentially reduce the cost of the coverage through the distribution of surplus funds and investment earnings.

(7) Describe any rules in the affected rule set that are obsolete, unnecessary, and can be rescinded.

No rules within the affected rule set are obsolete and unnecessary.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

(8) Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings on the agency promulgating the rule).

There will be no additional costs to the Agency associated with this change.

(9) Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

No Agency appropriation or funding source is necessary with this rule change.

(10) Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts. So despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

The rule will expand investment opportunities for workers' compensation group self-insurers. It will place no additional burdens or duplicate any existing rules. The benefit of the rule is the potential for additional returns of surplus through increased investment earnings. Any burden related to this rule would only result from investment loss whereby surplus returns may be diminished by changes in the market, which bears no relationship to Agency regulation.

Impact on Other State or Local Governmental Units:

(11) Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

Group self-insurer funds exist for both governmental entities and local and intermediate school districts. The change in this rule will enable additional investment opportunities for these groups thereby potentially increasing investment earnings and potential surplus return. By making this change, investment risk is increased so the potential also exists for investment loss.

(12) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

This rule change imposes no additional duty or responsibility on units of government participating in these programs.

(13) Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

This rule change requires no additional funding source nor imposes any additional costs on the state or local government.

Rural Impact:

(14) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The rule change will have no impact on rural areas.

Environmental Impact:

(15) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

The rule change will have no impact on the environment.

Small Business Impact Statement:

[Please refer to the discussion of "small business" on page 2 of this form.]

(16) Describe whether and how the agency considered exempting small businesses from the proposed rules.

This rule change is considered favorably by the boards of trustees that oversee the group funds on behalf of their small business membership. The boards and the association that represents these boards have requested this change and the Agency concurred.

(17) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(A-D)), or (b) the reasons such a reduction was not lawful or feasible.

This rule change imposes no additional burdens upon small business. The intent of the rule is to enhance the investment opportunities for group self-insurers thereby benefiting the members of the group programs which are made up of small businesses.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

There are approximately 8,200 small business and governmental units participating in the group self-insurer program. This change will potentially benefit those entities wishing to enhance investment opportunities. The probable impact cannot be determined as it is related to the performance of the investment marketplace and skill of those investing on behalf of the group self-insured programs.

(B) Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

This rule change has no additional impact on compliance, reporting requirements or record keeping for small business.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

Group self-insurers currently report their compliance with the investment requirements through their professional investment advisors and auditors. The Agency does not require any additional reporting by the individual members of the various groups. This rule change does not alter the current accepted reporting practice.

(D) Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

This rule does not impose any additional performance, design or operational standards.

(18) Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

This rule does not impose any impact on small business in relationship to their size or geographic location.

(19) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

This rule change does not impose any new or additional reporting requirements on any party.

(20) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

This rule change does not impose any new or additional costs on any party.

(21) Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

This rule change does not impose any new or additional legal, consulting or accounting services, or costs on any party.

(22) Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

No additional costs will be imposed upon small business resulting from this rule change.

(23) Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

No additional cost will be imposed upon the Agency in oversight of this rule change.

(24) Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

This rule change enhances the investment opportunities for group self-insurers made up of many small businesses. It provides the group self-insurers greater flexibility in investment with no additional compliance requirements.

(25) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

This rule change was developed in conjunction with the administrators of various boards of trustees of the group programs, and the Michigan Counsel of Self-Insured Group Administrators.

Cost-Benefit Analysis of Rules (independent of statutory impact):

(26) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

There will be no additional costs imposed upon any party resulting from this rule change.

(27) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

There will be no additional statewide compliance costs resulting from this rule change.

(28) Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

Cost reductions may result from this rule change in the form of increase investment earnings for the various group programs. Those increased investment earnings will be passed on to the various business and governmental units participating.

(29) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

Benefit from this rule change is directly related to performance of the investment market place and the skill of the various investment advisors hired by the group programs to oversee their investments. The market gain or loss is not quantifiable.

(30) Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

The change potentially will result in reduced workers' compensation costs for the employer members of the groups therefore reducing their cost of doing business in Michigan.

(31) Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

No party will be disproportionately affected by this rule change.

(32) Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

Survey of programs in other states, discussions with investment advisors and consultation with group fund administrators and their association.

Alternatives to Regulation:

(33) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

No other alternative exist.

(34) Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

No changes to the existing regulatory program are proposed. The existing program is a private/public regulatory partnership whereby compliance reviews are done by private entities such as investment advisors, who are contracted by the various group programs to make recommendations on investment opportunities.

(35) Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

No other alternatives were considered, as the request came from the regulated group programs and the Agency concurred with the request as presented.

Additional Information

(36) As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

This change imposes no new regulatory compliance rules. Existing reporting and compliance requirements are found on the Agency web site.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

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Date RIS approved:

ORR assigned rule set number:

Date of disapproval:

Explain:

More information needed:

Explain: